

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.37 OF 2002

Mr Manish Teckchandani

... Petitioner

v/s

Angel Broking Ltd. and others

... Respondents

Mr Shailesh Shah with Mr P.N. Bunwani i/b Mr T.N.
Tripathi for Petitioner.
Mr B.J. Somandy i/b M/s Sanjay Udeshi and Co. for
Respondents.

CORAM : **D.K.DESHMUKH J.**

DATE : **23RD AUGUST 2004**

P.C.:

1. By this petition, the petitioner challenges the award made by the Sole Arbitrator directing the petitioner to pay an amount of Rs.4,95,900/- to the respondents. So far as this award is concerned, though it is challenged by the petitioner, in my opinion, there is no substance in the challenge because if one goes through the pleadings and evidence in arbitration petition No.325 of 2002, the petitioner in that petition proceeded on the basis that this amount was payable by the petitioner to the respondents and therefore, there was a settlement deed between the parties. In my opinion, therefore, no exception can be taken to the award. It is further to be seen here that the claim of the respondents was based on the entries in the ledger maintained by them of the account of the petitioner. On the basis of the same entries, the petitioner had made claim before the Arbitrators under the National Stock Exchange which is the subject matter of arbitration petition No.325 of 2002. Thus, in my opinion, there is no substance in the challenge.

2. The learned counsel appearing for respondents

submitted that the Arbitrators have given cogent reasons for rejecting the counter claim submitted by the petitioner. The counter claim submitted by the petitioner is to be found in paragraph 5(b), (c) and (d) of the affidavit of Shyamlal Teckchandani dated 18th December 2000. They read as under :-

"5. At the further outset, I say and submit that the Claimants have made various false statements with a view to mislead the Hon'ble Forum and has not approached with clean hands. The Claimants have suppressed various material facts, documents, correspondence etc. which are relevant for deciding the issues and controversies between the parties. Some of the relevant facts are as follows :-

(a)

(b) In the course of such trading, in or about 16th August 1999, besides other shares, the Respondent purchased certain shares of Wipro Ltd. and ITC Badra Chalam on or about 17th September 1999. The Respondent paid entire consideration

in respect of the said Wipro shares and ITC Badra Chalam shares. however, despite repeated requests and reminders, the said Broker failed and neglected to give delivery of the said shares together with dividends and all other benefits accrued thereto. As the account was running, the Respondent and his group were relying upon the said brokers who were assuring them to give delivery of pending shares. I crave leave to refer to and rely upon the relevant bills in respect of purchase of said shares when produced.

(c) However, on 22nd February 2000, the father of the Respondent, who was looking after all family accounts, attended the office of the Claimants and requested them to sell 50 shares of Wipro Ltd., delivery of which was pending with the broker since August 1999. However, to the utter shock and surprise, the said broker did not allow the Respondent to sell the said shares at the price then prevailing in the market i.e. about

Rs.9615/- per share. The Respondent is entitled to claim Rs.4,80,750/- being the price of the said 50 shares at the rate of Rs.9,615/- together with interest at the rate of 24 % per annum from 22nd February 2000. The Respondent was selling the said share to settle the account of the Claimants.

- (d) Besides above, the said broker illegally and wrongfully sold 1100 carried forward shares of State Bank of India on 25th February 2000 at the rate of Rs.240.78. The Respondent, for the first time, came to know about the said illegal and unauthorised sale of the said carried forward shares at about 1.30 p.m. on 29th February 2000 when the price of the said shares was Rs.261.78. The appellant has caused loss and damage to the Respondent at the rate of Rs.21/- per share, amounting to Rs.23,100/- on account of illegal and unauthorised sale of said carried forward 1100 shares of State Bank of India. Immediately, after knowing the said illegal transaction of

the carried forward shares on 29th February 2000, the Respondent protested the same, when the broker agreed to compensate the Respondent loss and damage suffered by him for the sum of Rs.23,100/- on account of said illegal transaction effected by the broker without knowledge, permission or information of the Respondent. Without prejudice to above, the Claimants, ought not to have sold the said carried forward shares of State Bank of India on 25th February 2000 to adjust any account of BSE or NSE as there was huge credit balance and deliveries of various shares were pending with the broker. I crave leave to refer to and rely upon the relevant bills in respect of said Badala transaction and quotation of 29th February 2000."

. Perusal of this counter claim shows that each of them relates on oral instructions given on behalf of the petitioner to the respondents. Admittedly, there is no oral evidence led on behalf of the petitioner. There is also no document on record which will establish such

oral instructions. In my opinion, therefore, though the reasons given by the Arbitrator in the award may not be capable of being termed as cogent reasons for rejecting the counter claim, I find that in the absence of oral evidence, it was not possible for the Arbitrator to grant the counter claim. In my opinion, no exception can be taken to the finding of the Arbitrator rejecting the counter claim. In the result therefore, petition fails and is dismissed with no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.
